IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.3837 OF 1995

1) Executive Engineer)
Environmental Engineering Works)
Division, Mazda Bldg.)
Pune 1).. Petitioner

Versus

1) Prakash Dattoba Alhat)
Bahinroba Pumping Station)
Koregaon Park Road)
Pune 1.)

2) Presiding Officer)
1st Labour Court, Pune.).. Respondent

Mrs.Neeta Karnik for the Petitioner.

Respondent No.1 absent though served.

Respondent No.2 formal party.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 30TH AUGUST 2004

ORAL JUDGMENT :

. This Petition challenges the Award dated 1st March 1994 passed by the 1st Labour Court, Pune in Reference (IDA) No.293 of 1988 granting reinstatement with continuity of service and full back wages to the first Respondent workman. The first Respondent though served is not remaining present in the Court. Hence, the matter was adjourned in order to enable the Advocate for the Petitioner to serve the first Respondent since

he was not appearing. Accordingly, service has been effected on the first Respondent workman. An affidavit to that effect is tendered in Court. The workman has informed the affiant that he is employed in the Income Tax Department. An affidavit of the workman is also enclosed. This affidavit is dated 16th September 1995 in which the workman states that he will be satisfied if he is paid compensation and litigation expenses. The first Respondent is not present in Court even today despite service.

2. The first Respondent workman was given employment as a daily rated casual mazdoor by the Petitioner from 3rd June 1984. It is the case of the Petitioner that the Respondent workman stopped reporting for duty from 31st March 1985. He raised a dispute for reinstatement in March 1988. This dispute was referred for adjudication on 27th October 1988. In the Statement of Claim annexed to the Petition, the first Respondent has categorically stated that his services had been terminated from 10th April 1985. He contended that he had completed 240 days in service and, therefore, was entitled to reinstatement with continuity of service and full back wages. The Written Statement filed by the Petitioner shows that the Respondent workman had completed only 158 days in service from 3rd June 1984 to 31st March 1985. The Petitioner contended that the

first Respondent had abandoned his services and it was for this reason that there was a cessation of employment. By an Award dated 1st March 1994, the Labour Court accepted the case of the first Respondent workman and granted reinstatement with continuity of service and full back wages. The Labour Court was of the view that the muster rolls and wage registers though produced from 1984 till 31st March 1985, could not be relied on as non-production of the muster rolls and wage register for the period April 1985 to July 1985 "creates a cloud in theory propounded by the first party as regards to the abandonment of the employment". The Labour Court has held that the Petitioner ought to have produced the muster roll for the entire period including April 1985 to July 1985. Furthermore, the Labour Court has found that the Petitioner did not take any steps to intimate to the first Respondent regarding his unauthorised absence from duty. Therefore, the Labour Court came to the conclusion that the termination of service was illegal.

3. As rightly contended by Mrs.Karnik for the Petitioner, the Labour Court has completely lost sight of the fact that the muster rolls which were produced from March 1984 till 31st March 1985 indicated that the workman had completed 158 days in service. The workman accepted that his services were terminated on 10th April

1985. That being the position, at best, the workman may have put in ten more days of service, it would mean that he had completed 168 days in service. However, this would not, in any manner, be sufficient to establish the fact that the workman had completed 240 days in service. Unless the workman completes 240 days in service, the question of claiming retrenchment compensation under Section 25F of the Industrial Disputes Act, 1947 does not arise. The findings of the Labour Court, therefore, cannot be accepted.

4. Furthermore, the case of the first Respondent workman that his services were terminated also appears to be false for more than one reason. If indeed there was a termination of service from 10th April 1985, the Respondent would have approached the machinery under the Industrial Disputes Act, 1947 with alacrity and would not have waited for three years before he raised the demand for reinstatement with continuation of service and full back wages. The Reference is made immediately in 1988. The Award was passed on 1st March 1994. It does not appear that the workman made any attempt to resume duty with the Petitioner. Prior to the filing of the Writ Petition on 11th August 1995, the Petitioner had called upon the workman to report for duty by their letter dated 17th April 1995 without prejudice to their rights and contentions in the Writ Petition. The

workman did not respond to this notice. Before admitting the Writ Petition, this Court had issued a notice to the Respondent to remain present in Court. He did not do so even at that stage. The absence of the workman today fortifies my view that there could not have been a termination of service but the first Respondent workman had abandoned his services in 1985. That being the position, the Award of the Labour Court is set aside. Writ Petition allowed. Rule made absolute. No order as to costs.